IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4932 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMLESH BHANVARLAL DAYMA KHATRI

Versus

STATE OF GUJARAT

Appearance:

MR PRAKASH THAKKAR with MR HR PRAJAPATI for Petitioner

MR DP JOSHI AGP for Respondent No. 1 to 3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 11/08/2000

ORAL JUDGEMENT

#. Detenue has filed this petition under Article 226 of the Constitution of India, challenging the order made by the District Magistrate, Valsad - respondent No.2 under the provisions contained in section 3 of the Prevention

of Blackmarketing & Maintenance of Supply of Essential Commodities Act (hereinafter to be referred to as "the Act") on 2.5.2000.

#. In the grounds of detention dated 2.5.2000 vide Annexure : B, it is disclosed that the detenue was engaged himself with others in changing the colour of kerosene from blue to white. On 24.4.2000, inquiry was made and in the presence of panchas, 955 ltrs. of blue kerosene filled in barrels, 140 litres of white kerosene filled in barrels, 200 litres of white kerosene, 180 litres of white kerosene mixed with chemical which was filled in barrels and one empty barrel were found. It is admitted by the detenue that the detenue had obtained blue kerosene illegally from the tankers passing through the highway on payment of Rs. 5.00 per litre. It is further disclosed in the grounds of detention that after converting blue kerosene to white kerosene, the detenue was selling the same at the rate of Rs. 14.00 per litre. Blue kerosene was meant for supply at cheaper rate to the downtrodden class. On these grounds and other grounds as disclosed in the grounds of detention, the detenue was detained.

#. Learned advocate appearing for the petitioner has raised several grounds. However, the petition is required to be disposed off only on one ground namely non-consideration of the representation made by the detenue. In ground J to para 4, it has been specifically stated by the detenue as under.

> "The petitioner most respectfully states that the representation dated 9.5.2000 was made by the father of the petitioner to the Hon'ble Minister of Civil Supply, New Delhi by speed post. It is submitted that the Hon'ble Minister is the head of the Civil Supply Department and competent to decide the representation received on behalf of the petitioner under the Rules of Business. Annexed hereto and marked as Annexure : D is a copy of the representation dated 9.5.2000 and the copy of postal receipt dated 9.5.2000."

On behalf of the Union of India, affidavit is filed by Under Secretary, Ministry of Consumer Affairs and Public Distribution, New Delhi, on 14th June, 2000, wherein it is stated in para 4 as under.

"As regards contention made in sub-paras (g),(i) and (j) of para 4 of the petition, it is submitted that a representation dated 5.5.2000 made in favour of the detenue was received on 15.5.2000 through office of the District Magistrate, Valsad vide their letter dated 11.5.2000."

Thus, reading the aforesaid part of para 4 of the affidavit filed on behalf of the Union of India, it becomes clear that the representaion dated 5.5.2000 which was forwarded through the office of the District Magistrate, Valsad was considered. There is no reference to the representation made by the detenue on 9.5.2000. Along with the petition, copy of the said representation is annexed to the petition at Annexure : D. In view of the specific averments made in the petition and the copy of the representation annexed to the petition, the Union of India ought to have considered the representation. Learned advocate appearing for the Union of India stated at the bar that the representation may not have been received. However, the detenue has served a copy of the affidavit to the counsel of the Union of India on 10.7.2000. Along with the affidavit, zerox copy of the letter dated 3.6.2000, signed by the Deputy Manager, Speed Post Business Office, Ahmedabad is annexed which inter alia states as under.

"I am pleased to inform you that the Speed Post article was delivered on 10.5.2000 under proper receipt, within the published norms."

Thus, the detenue has placed on record necessary material indicating that the representation was forwarded to the Union of India and even though the Union of India even after receipt of this affidavit comes out with a case that the representation was never received. Oral statement without anything on record cannot be accepted.

#. From what is stated hereinabove, it is clear that the fact that the representation was made by the detenue on 9.5.2000 which has been specifically referred to in the ground : J of para 4 has not been controverted and therefore, it can be said that the representation of the detenue has remained unattended and therefore the continued detention is bad and illegal.

#. Learned counsel for Union of India, after the order was dictated stated before the Court that on 24th July, 2000 on behalf of Union of India, the affidavit was sworn

stating that the representation dated 9.5.2000 has not been received in the concerned section. The sworn testimony is placed on record after the order was dictated. The father of the detenue has forwarded the representation as indicated above and has placed on record the letter of postal authorities stating that the article has been delivered. It is not the say of the respondent that the Hon'ble Minister was not competent to consider the representation or that the office of the Hon'ble Minister did not receive the representation. Under the circumstances, faint attempt was made subsequently by the respondent.

#. In view of what is stated hereinabove, the petition is allowed. The order of detention dated 2.5.2000 is hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs.

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pirzada/-